

The Buildings Energy Efficiency Ordinance

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The Buildings Energy Efficiency Ordinance (Cap.610) (the “**Ordinance**”) was gazetted on 3 December 2010 and will come into effect on a day to be appointed by the Secretary for the Environment. The Ordinance carries a mission to improve the local air quality and alleviate the impact of climate change by imposing mandatory compliance to energy efficiency standards to buildings in Hong Kong.

The Ordinance covers buildings in both the public and private sectors and requires compliance with codes of practice to be promulgated by the Electrical and Mechanical Services Department (“**EMSD**”) concerning the energy efficiency of four types of building services installations, which include air-conditioning, electrical, lift and escalator and lighting installations.

The law imposes different requirements on buildings constructed before and after the Ordinance comes into force.

Prescribed Buildings

Prescribed buildings are those which require the Certificate of Compliance Registration or the Form of Compliance mentioned below. They include commercial buildings, hotels and guesthouses, common areas of residential buildings, common areas of industrial buildings, hospitals, passenger terminal buildings of an airport, railway stations and

other buildings and areas as listed in Schedule 1 to the Ordinance.

Certain buildings are exempted from the application of the Ordinance: New Territories exempted houses, declared monuments under the Antiquities and Monuments Ordinance and low-energy use buildings (where the main electrical switch does not exceed 100A, 1-phase or 3-phase).

Some other building services installations are also exempted on technical or operational grounds, for example, installations for fire suppression, surgical operation, industrial manufacturing, air traffic regulation or railway traffic safety.

Exemptions are also available for individual cases upon application to the EMSD.

Post-enactment Buildings

The developer of a prescribed building for which consent to the commencement of building works for superstructure is given after the relevant part of the Ordinance comes into effect will need to submit two self-declarations of compliance to the EMSD:

- a. A stage one declaration must be submitted within two months after obtaining the consent for commencement of building works for the superstructure construction, to confirm that suitable design provisions are included to enable compliance with the specified

standards and requirements in the codes of practice.

- b. A stage two declaration must be submitted within four months after the issuance of the occupation permit, to confirm that the building services installations in the building have been designed, installed and completed in compliance with the codes of practice.

The EMSD will issue to the developer a Certificate of Compliance Registration within three months after receiving the stage two declaration provided that all supporting information and documents required by the EMSD have been produced.

The building owner must ensure that the building services installations are maintained to a standard not lower than that applied in the first Certificate of Compliance Registration issued in respect of the building.

The Certificate of Compliance Registration is valid for ten years and will be subject to renewal upon application by the building owner.

The EMSD will keep a register of buildings issued with a Certificate of Compliance Registration and will make available for inspection by members of the public free of charge (i) a copy of the register at all reasonable times and (ii) the content of the register through the internet.

Pre-enactment Buildings

Pre-enactment buildings are not subject to the mandatory scheme immediately.

Prescribed buildings will be required to improve energy efficiency when they undergo certain major retrofitting works and the responsible persons (owners and tenants) are required to obtain a Form of Compliance within two months after the completion of the works.

Such a Form must be issued by a registered energy assessor who has to confirm, amongst other things, that the building services installations in respect of which the major retrofitting works were carried out comply with the specified standards and requirements. The registered energy assessor is required to send a copy of the Form of Compliance to the EMSD and another copy to the property management company of the building concerned.

If a Form of Compliance has been issued for major retrofitting works in respect of any building services installation, such installation has to be maintained to a standard not lower than that applied in the latest Form of Compliance issued in respect of the installation.

Major retrofitting works include works involving the addition or replacement of a building services installation that covers a total floor area of not less than 500m² under the same series of works within a period of 12 months, or addition or replacement of a main component of a central building services installation such as a unitary air-conditioner or the drive of a lift or escalator.

Periodic Energy Audits

Owners of commercial buildings or commercial portions of a composite building (both pre-enactment and post-enactment buildings) are required to arrange energy audits for the central building services installations at least once every ten years.

An energy audit must be carried out by a registered energy assessor who is to issue an Energy Audit Form and send a copy of such Form and an energy audit report to the EMSD within 30 days after issuing the Energy Audit Form.

The owner of a building in respect of which an Energy Audit Form is in force must exhibit a copy of

the Form in a conspicuous position at the main entrance of the building.

Enforcement

To ascertain whether the Ordinance has been or is being complied with, authorised officers of the EMSD may, upon at least 14 days notice, enter during reasonable hours and inspect any part of a prescribed building that is not for residential use.

The EMSD may issue an improvement notice to the developer, the owner of a prescribed building or the responsible person of a unit of a prescribed building to require the person to remedy any contravention of the requirements under the Ordinance.

A scheme of penalties have been prescribed under the Ordinance to punish non-compliance. Fines range from HK\$10,000 (for example, for a registered energy assessor who fails to send a copy of the Form of Compliance to the property management company of the building concerned) to HK\$1 million (for example, for a developer who fails to make and submit to the EMSD a stage two declaration). Obstructing authorised officers in the exercise of their powers, falsification of documents or provision of false or misleading information will carry potential terms of imprisonment.

Implications on Conveyancing Transactions

For those handling conveyancing transactions, it is good to note that the Lands Department has confirmed in writing that despite any Land Grant provision requiring compliance with laws and regulations in force in Hong Kong, it will not, in its capacity as landlord, exercise the right of re-entry under the Land Grant for any non-compliance with this new legislation.

Please click [here](#) to see Lands Department's letter of 12 November 2010.

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